IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6893 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SUNTEX INDUSTRIES PVT. LTD.

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioners.

MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Standing Counsel for the respondents waives service of Rule.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 25th January 2001 (Annexure 'E') passed by respondent No.3 Deputy Commissioner of Central Excise, Division-VI, Surat-1 determining the capacity of production in the petitioners' processing house for the period from 16.12.1998 to 31-3-1999 at Rs. 8,02,74,000/= and determining the production capacity of the unit during the period from 1.4.1999 to 29-2-2000 as Rs. 25,11,30,000/=. By the said order, the petitioner is also directed to deposit the Central Excise duty as per the details given in the said order.

3. In paragraph 5 of the petition, it is averred that respondent No.3 had not issued any notice of personal hearing before finalisation of the provisional determination by passing the impugned order dated 25th January 2001.

4. Though the petition is opposed and affidavit-in-reply dated 6th August 2002 is filed by the Deputy Commissioner of Central Excise, Division-VI, Surat-1, there is no denial of the aforesaid averment in paragraph 5 of the petition. In view of this fact, it appears that the impugned order dated 25th January 2001 Annexure 'E' was issued by respondent No.3 without giving the petitioner a reasonable opportunity of being heard. The impugned order therefore suffers from the vice of breach of the principles of natural justice and, therefore, deserves to be quashed and set aside.

5. In view of the above discussion, the petition is allowed. The impugned order dated 25th January 2001 at Annexure 'E' is quashed and set aside, without prejudice to the powers of respondent No.3 to pass appropriate orders in accordance with law on the subject matter covered by the said order, after giving the petitioner a reasonable opportunity of being heard.

As regards the prayer 'B' in the petition which pertains to the claim for refund, no opinion is expressed because if at all required, it will be open to the petitioner to file a fresh application for such refund after respondent No.3 decides the matter afresh in accordance with law.

6. Rule is made to the aforesaid extent with no order as to costs.

rmr. [M.S. Shah, J.]

[K.A. Puj, J.]